



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 2, 1947

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-444

Re: Authority of tax collector to accept partial payment of taxes on property not listed on tax roll when taxpayer applies to ascertain amount of taxes before November 30th of the year for which assessment should have been made.

Dear Sir:

Your letter of November 13, 1947, poses the following question:

"Where a taxpayer applies to a tax collector to pay his taxes before November 30 of the year for which his assessment should have been made and finds that his property does not appear on the tax roll, is the tax collector required then and there to assess and collect the total tax due on the property of the taxpayer or is he authorized to accept one-half of the taxes imposed by law on the taxpayer and give the taxpayer until the 30th day of the succeeding June within which to pay the other one-half of his said taxes?"

Article 7209, V.C.S., reads, in part, as follows:

"Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax

roll to be made by him. . . ." (Emphasis added throughout this opinion)

Article 7336, V.C.S., provides that "if any person shall pay, on or before November thirtieth of the year for which their assessment is made, one-half ($\frac{1}{2}$) of the taxes imposed by law on him or his property, then he shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half ($\frac{1}{2}$) of his said taxes without penalty or interest thereon." Otherwise, "unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January," penalties in fixed percentages varying according to stated periods accrue.

Any question as to the collector's authority to accept the partial payments authorized by Article 7336 under the situation contemplated by Article 7209 arises, of course, from the language in Article 7209 to the effect that the collector "shall . . . collect the taxes" with the resulting implication, particularly in view of the use of the word "shall", that he must collect all the taxes. However, the terms of Article 7336 are equally mandatory in that it is provided that after payment of one-half of the taxes, etc., the taxpayer "shall have . . . until and including the thirtieth day of the succeeding June . . ." in which to pay the balance. Although there are no cases construing these two articles together, a brief examination of their history and an application of well settled rules of statutory construction have led us to the conclusion that the collector is not only authorized to accept such partial payment but indeed is under a duty to accept same.

Article 7209 was originally enacted in 1895. See Acts 1895, p. 103; G.L. vol. 10, p. 833. Article 7336 was amended to provide for partial payment of taxes in 1931. See Acts 1931, 42nd Leg., p. 196, ch. 117. It is elementary that statutes in pari materia, i.e., on the same subject (in this case the collection of taxes), must be construed with reference to each other; and "if one construction or the other is necessary to prevent conflict with other statutes, that construction which is consistent with legislative intent will be adopted." Sutherland, Statutory Construction, § 5817; § 6710. There can be no question but that the Legislature by the later of these enactments intended that all taxpayers be given the opportunity to pay their taxes in the manner provided in Article 7336.

The provisions of Article 7209, which are primarily concerned with providing for the procedure to be followed when property has been omitted from the rolls, could not logically be viewed as establishing a different rule for the taxpayer, who, through no fault of his own, chanced to come within its terms. Indeed, to deny such taxpayer the opportunity for partial payment provided by Article 7336 would be in contravention of the fundamental constitutional guarantee of equal protection of the laws, and would result in invalidating Article 7209. It is "constantly asserted by the courts that every presumption favors the validity of an act of the legislature and that all doubts must be resolved in support of the act." Sutherland Statutory Construction, § 4509 and authorities cited therein.

You are therefore advised that the collector should proceed to assess the tax in this case in accordance with the provisions of Article 7209 and that he must further accept the payment of one-half ($\frac{1}{2}$) of the tax thus imposed and that the taxpayer "shall have until and including the thirtieth day of the succeeding June, within which to pay the other one-half ($\frac{1}{2}$) of his said taxes without penalty or interest thereon."

SUMMARY

When a taxpayer applies to a tax collector to pay his taxes before November 30th of the year for which his assessment should have been made and finds that his property does not appear on the tax roll, the tax collector is required to then and there assess the total tax due on the property and to accept, if tendered, one-half of the taxes imposed by law on the taxpayer or his property for that year; and the taxpayer shall have until and including the 30th day of the succeeding June, within which to pay the other one-half ($\frac{1}{2}$) of his taxes for said year without penalty or interest thereon. Articles 7209, 7336, V.C.S.; Sutherland, Statutory Construction, §§ 5817; 6710; 4509.

Yours very truly

APPROVED

ATTORNEY GENERAL OF TEXAS

Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL

By *Marietta Creel*
Mrs. Marietta Creel
Assistant

MC/lh